

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling That)	WC Docket No. 05-276
UniPoint Enhanced Services, Inc. d/b/a)	
PointOne and other Wholesale Transmission)	
Providers Are Liable for Access Charges)	

In the Matter of)	
)	
Petition for Declaratory Ruling that)	
VarTec Telecom, Inc. Is Not Required to)	WC Docket No. 05-276
Pay Access Charges to Southwestern Bell)	
Telephone Company or Other Terminating)	
Local Exchange Carriers When Enhanced)	
Service Providers or Other Carriers)	
Deliver the Calls to Southwestern Bell)	
Telephone Company or Other Local)	
Exchange Carriers for Termination)	

COMMENTS OF CINERGY COMMUNICATIONS COMPANY

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November 10, 2005

Cinergy Communications Company ("CCC") is a privately held competitive local exchange carrier ("CLEC"). Cinergy Corp. owns approximately 1/3 of the shares of the corporate parent of CCC, Q Comm Corporation. Cinergy Corp. licenses the name Cinergy to CCC, but it does not exercise managerial control over the company. CCC provides voice and data services to business and residential customers in Indiana, Kentucky, Tennessee, Ohio, Illinois and Michigan.

CCC began selling local voice service utilizing the UNE platform ("UNE-P") in 2001. UNE-P allowed CCC to grow its customer base and learn how to operate a telecommunications network. CCC always treated UNE-P as a regulatory head start to facilities-based competition instead of a business plan unto itself. Over the past several years, CCC has reinvested millions of dollars of profit from UNE-P into building a facilities-based network that is carrier class. CCC is now bringing sustainable competition to underserved markets in its territory. This network is not only better for competition; it also provides redundancy and assists with national security. CCC played by the rules and has done everything that was intended by the Telecommunications Act of 1996 to bring competition to the market.

As a result of recent regulatory changes at this Commission, CCC must rely on its own network and must continue to pay for expansion of that network. Building and maintaining a network wholly separate from the Bell network is expensive. CCC relies upon access charges as a major source of revenue to support its facilities-based network. New entrants such as CCC will be hardest hit by the loss of revenue because these networks are still under construction and require new sources of revenue. CCC is

prepared to compete in the market, but it cannot do so if competitors can access its network without paying while CCC's own long distance traffic includes an element of access in its cost.

Although we know that arbitrage is occurring, it is not easy to detect. We are now investing in expensive SS7 tools which will help ferret out this complicated fraud. However, even at this early stage of the investigation it is clear that millions of minutes per month enter our network from a single phone number. Likewise, traffic enters our network bearing CIC 0000, indicating that the traffic has been manipulated. It is our contention that this traffic is being manipulated in an effort to avoid paying access charges. This arbitrage is depriving CCC of revenues that could be used to build and grow the network.

CCC supports SBC's Petition in this docket. CCC believes that this traffic should be treated like all other PSTN traffic despite the fact that it has IP in the middle. The *AT&T Order* should have made it clear to these companies contemplating arbitrage that access charges were owed.¹ The FCC should now bring certainty to this issue and order that wholesale transmission providers using IP technology to transport ordinary long distance calls are liable for access charges under Rule 69.5 and applicable tariffs. Once a determination is made by this Commission, CCC and others can use the federal courts to recover the access charges owed pursuant to tariff.

CCC has negotiated at arms length with several of the companies mentioned by SBC in its Petition. These companies hold themselves out as ordinary IXC's, albeit at a much lower price. Since these companies were willing to haul CCC's ordinary long

¹ *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361 (FCC filed Oct. 18, 2002).

distance traffic, it is likely that much of the traffic hitting CCC's network from these companies is also ordinary long distance. CCC ultimately chose not to do business with an IP based wholesale transmission provider precisely because CCC did not want to be responsible for these charges. The FCC should enter an order that dissuades other providers from seeking short cuts and arbitrage opportunities.

It is not fair to allow IP in the middle providers to avoid paying access charges. This traffic is clearly accessing the PSTN and should be compensated. If this traffic were terminating to an IP network, then it would not be an issue. However, these IP in the middle companies want to have it both ways by accessing users of the PSTN without just compensation.

The Commission should declare that wholesale transmission providers are "interexchange carriers" for purposes of Rule 69.5(b) and are thus liable for access charges when they "use local exchange switching facilities for the provision of an interstate or foreign telecommunications service."

Respectfully submitted,



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